

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: William J. RABATSKY 550514

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2444

William J. RABATSKY

This appeal has been taken in accordance with 46 USC 7702 and 46 CFR 5.701.

By order dated 11 July 1986, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, suspended Appellant's license for three months remitted on twelve months' probation upon finding proved the charge of misconduct. The specification found proved alleges that on or about June 26, 1985, Appellant, while serving as operator aboard the M/V JOHN M. SELVICK, under the authority of the captioned document, operated the vessel and two on Lake Michigan during a period of darkness without ensuring that the tow was equipped with adequate navigational sidelights as required by Rules 22 and 24 of the Inland Navigational Rules.

The hearing was held at Chicago, Illinois on 20 March 1986.

At the hearing Appellant was represented by professional counsel and denied the charge and specification.

The Investigating Officer introduced in evidence ten exhibits and the testimony of one witness.

In defense, Appellant introduced in evidence five exhibits, his own testimony, and the testimony of two additional witnesses.

After the hearing the Administrative Law Judge rendered a decision in which she concluded that the charge and specification had been proved, and entered a written order suspending all licenses and certificates issued to Appellant for three months remitted on twelve months' probation.

The complete Decision and Order was served on 14 July 1986. Appeal was timely filed on 11 August 1985 and perfected on 15 September 1986.

FINDINGS OF FACT

Appellant is the holder of a Coast Guard license which authorizes him to serve as mate of steam and motor vessels of any gross tons upon the Great Lakes, and as First Class Pilot for steam and motor vessels of any gross tons on the Great Lakes from Duluth to Gary and Buffalo.

On 26 June 1985, Appellant was serving as Operator aboard the M/V JOHN M. SELVICK, and uninspected towing vessel 112 feet in length. The JOHN M. SELVICK was towing the barge CMS 751, an inspected ocean freight barge 180 feet in length.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant has advanced several bases for appeal. However, because of the disposition of the case, these bases are not discussed.

Appearance: Harold L. Witsaman, Esq.; Ray, Robinson, Hanninen & Carle; Chicago, Illinois

OPINION

After the hearing concluded, on 9 June 1986, Appellant filed with the Administrative law Judge 55 proposed findings of fact and 4 proposed conclusions of law, accompanied by a fourteen page brief. The Administrative Law Judge did not rule upon these proposals, and did not refer to them in the Decision and Order. Accordingly, the record as presently constituted is incomplete and cannot be adequately reviewed on appeal.

The Administrative Procedure Act, 5 USC 557(c), provides, in pertinent part:

. . . the parties are entitled to a reasonable opportunity to submit . . .

(1) proposed findings and conclusions; or

(2) exceptions . . .; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. (Emphasis supplied.)

The Commandant has held that the failure of an Administrative Law Judge to rule upon proposed findings and conclusions prior to rendering a decision constitutes error, requiring remand for further proceedings. Appeal Decisions 549 (DIETRICH) and 580 (TIMMERMAN).

ORDER

The decision and order of the Administrative Law Judge dated 11 July 1986, at St. Louis, Missouri, is modified as follows
The finding of the Administrative Law Judge as to the charge of misconduct is SET ASIDE. The order suspending Appellant's license is VACATED. The case is REMANDED to the Administrative Law Judge for further proceedings consistent with this decision.

Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C. this 10th day of February 1987.

***** END OF DECISION NO. 2444 *****